

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

United States of America,
Plaintiff,

03-CR-0129
(CPS)

- against -

Howard Thomas Porter,
Defendant.

ORDER

-----X
Having considered Howard Thomas Porter's *pro se* motion for reconsideration of the undersigned's November 13, 2007 Memorandum Opinion & Order denying his Federal Rule of Civil Procedure 60(b)(6) motion, Porter's motion for reconsideration is denied.

As discussed in the November 13, 2007 Memorandum Opinion & Order, Porter has failed to state a valid Rule 60(b)(6) claim. Rule 60(b)(6) only applies to civil judgments and is not a procedural vehicle available to defendants seeking direct relief from criminal convictions. Porter's reliance on *Gonzalez v. Crosby*, 545 U.S. 524 (2005), and *Materese v. Lefevre*, 801 F.2d 98 (2d Cir. 1986), in support of his motion for reconsideration is misplaced, because the defendants in those cases filed Rule 60(b) motions seeking relief from judgments in habeas corpus proceedings, which are civil in nature.¹ Because Porter does not

¹ The other two cases that Porter cites, *Ackerman v. U.S.*, 340 U.S. 193 (1950), and *Blue Diamond Coal Co. v. Trustees of the UMWA Combined Benefit Fund*, 249 F.3d 519 (6th Cir. 2001), in support of his motion for reconsideration are also inapplicable, because they involve 60(b) motions filed in connection with different types of civil proceedings.

have an underlying writ of habeas corpus petition that has already been adjudicated by the Court, he does not have a legal basis for filing a Rule 60(b)(6) motion at this time.

Accordingly, Porter's motion for reconsideration of his Rule 60(b)(6) motion is denied.

The clerk is directed to transmit a filed copy of the within to the parties and the magistrate judge.

SO ORDERED.

Dated : Brooklyn, New York
January 3, 2008

By: /s/ Charles P. Sifton (electronically signed)
United States District Judge